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7 OpenDNS, Inc.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 OPENDNS, INC.,

13 Plaintiff,

14 v.

15 PAXFIRE, INC., and HALSEY MINOR,

16 Defendants.  
17

Case No.: 5:11-cv-05101-EJD

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT**

**JURY TRIAL DEMANDED**

18  
19 Plaintiff OpenDNS, Inc. (“OpenDNS”) submits its First Amended Complaint for  
20 Declaratory Relief against Paxfire, Inc. (“Paxfire”) and Halsey Minor (“Minor”) as follows:

21 **THE PARTIES**

22 1. OpenDNS is a California corporation with its principal place of business in San  
23 Francisco, California.

24 2. On information and belief, defendant Paxfire is a Virginia corporation with its  
25 principal place of business in Sterling, Virginia.

26 3. On information and belief, defendant Minor is an individual who resides in this  
27 District.  
28

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 2201-2202, 1338, and 1331. The controversy arises under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* and relates to the non-infringement of U.S. Patent No. 7,631,101 (the “101 Patent”), which, upon information and belief, is owned by defendants.

5. A real, immediate, and justiciable controversy exists between OpenDNS and defendants relating to allegations by defendants that certain OpenDNS products and services infringe any valid claims of the ’101 Patent.

6. On information and belief, this Court has personal jurisdiction over defendants because defendants have constitutionally sufficient contacts with this judicial District as to make personal jurisdiction proper in this District. Defendants have purposefully availed itself of the benefits and protections of the laws of this State, including this judicial District, in connection with its conduct in wrongfully asserting the ’101 Patent against OpenDNS, and in pursuing licensing and enforcement activities regarding the ’101 Patent throughout California. Defendant Paxfire is a registered corporation with the California Secretary of State and has a registered agent for service of process in California. On information and belief, defendant Minor resides in this District.

7. On information and belief, defendants do and have done substantial business in this judicial District, including regularly doing business or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from products and/or services provided to individuals in this District and in this State.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391 (b) and (c).

**FACTUAL BACKGROUND**

9. OpenDNS is a provider of security and infrastructure products and services that make the Internet safer through integrated Web content filtering, anti-phishing and DNS. OpenDNS products and services enable consumers and network administrators to secure their networks from online threats, reduce costs and enforce Internet-use policies.

10. On information and belief, defendants are the present owners of all right, title, and

1 interest in the '101 Patent.

2 11. Defendants have alleged that various OpenDNS products and services infringe  
3 U.S. Patent No. 7,631,101 (the "'101 Patent"), issued on December 8, 2009, and entitled  
4 "Systems and Methods for Direction of Communication Traffic." A true and correct copy of the  
5 '101 Patent is attached hereto as Exhibit A.

6 12. On August 30, 2011, Charles Allen Bargfrede, Esq. attorney for Paxfire, Inc.,  
7 wrote to OpenDNS, Inc., expressly charging that various OpenDNS products infringe the '101  
8 Patent. Mr. Bargfrede enclosed a copy of the patent with his letter purportedly illustrating the  
9 alleged infringement.

10 13. In his August 30 letter, Mr. Bargfrede threatened that Paxfire would protect its  
11 intellectual property rights if OpenDNS did not agree to license the asserted patents.  
12 Mr. Bargfrede also alleged that Paxfire may be entitled to enhanced damages or OpenDNS's  
13 profits, and alleged that Paxfire may be awarded attorneys' fees.

14 14. In an email dated November 20, 2011, defendant Minor claims that he now owns  
15 all of the patents held by Paxfire, which on information and belief include the '101 Patent.  
16 Defendant Minor subsequently emailed OpenDNS on November 25, 2011 and repeated the  
17 threats to initiate a patent infringement action against OpenDNS.

18 15. By virtue of defendants' actions, OpenDNS reasonably believes that defendants  
19 intend to sue it for infringing the '101 Patent.

20 16. OpenDNS denies that it infringes any claim of the '101 Patent.

21 **FIRST CLAIM FOR RELIEF**  
22 **DECLARATORY RELIEF OF NON-INFRINGEMENT**

23 17. OpenDNS incorporates by reference paragraphs 1 through 16 above as though  
24 fully set forth herein.

25 18. An actual and justiciable controversy exists between defendants and OpenDNS  
26 concerning whether OpenDNS infringes any claim of the '101 Patent.

27 19. OpenDNS has not infringed and does not infringe, directly or indirectly, whether  
28 literally or through the doctrine of equivalents, any valid and enforceable claim of the '101

1 Patent.

2 20. Open DNS has not and does not induce other to infringe, directly or indirectly,  
3 whether literally or through the doctrine of equivalents, any valid and enforceable claim of the  
4 '101 Patent.

5 21. A judicial declaration is necessary so that OpenDNS may ascertain its right  
6 regarding the '101 patent. Accordingly, OpenDNS seeks a declaratory judgment pursuant to  
7 28 U.S.C. §§ 2201-2202 that OpenDNS products do not infringe any claim of the '101 Patent.

8 **SECOND CLAIM FOR RELIEF**  
9 **DECLARATORY RELIEF OF INVALIDITY**

10 22. OpenDNS incorporates by reference paragraphs 1 through 21 above as though  
11 fully set forth herein.

12 23. An actual and justiciable controversy exists between defendants and OpenDNS  
13 concerning whether the '101 Patent is invalid.

14 24. Upon information and belief, one or more of the claims of the '101 Patent is  
15 invalid for failing to comply with the conditions and requirements for patentability as set forth in  
16 the United States Patent Laws, Title 35 U.S.C., including specifically §§ 102, 103 and/or 112 and  
17 the rules, regulations, and laws pertaining thereto.

18 25. A judicial declaration is necessary so that OpenDNS may ascertain its right  
19 regarding the '101 Patent. Accordingly, OpenDNS seeks a declaratory judgment pursuant to 28  
20 U.S.C. §§ 2201-2202 that the '101 Patent is invalid.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, OpenDNS prays for the following relief:

- 23 A. A judgment for OpenDNS against defendants;
- 24 B. An order declaring that OpenDNS products do not infringe, and have not  
25 infringed, the '101 Patent;
- 26 C. An order declaring that one or more claims of the '101 Patent is invalid;
- 27 D. An order declaring that defendants are not entitled to an injunction against  
28 OpenDNS;

1 E. An order granting such other and further relief as may be deemed just and  
2 appropriate.

3 Dated: December 1, 2011

FENWICK & WEST LLP

4  
5 By: /s/ Michael J. Sacksteder

6 Michael J. Sacksteder

7 Bryan A. Kohm

8 Attorneys for OpenDNS, Inc.

9 **DEMAND FOR A JURY TRIAL**

10 In accordance with Federal Rule of Civil Procedure 38(b), OpenDNS hereby demands a  
11 trial by jury on all issues so triable.

12  
13 Dated: December 1, 2011

FENWICK & WEST LLP

14  
15 By: /s/ Michael J. Sacksteder

16 Michael J. Sacksteder

17 Bryan A. Kohm

18 Attorneys for OpenDNS, Inc.